

7 27-96

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
S/S Wye Road, 15 ft. S of c/l
of St. George Road * ZONING COMMISSIONER
360 Wye Road
15h Election District * OF BALTIMORE COUNTY
7th Councilmanic District
Joseph G. Bittle, Jr., et ux * Case No. 96-104-A
Petitioners

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for the property located at 3360 Wye Road in the Middleborough section of Baltimore County. The Petition is filed by Joseph G. Bittle, Jr. and Lois J. Bittle, property owners. Variance relief is requested from Section 427 of the Baltimore County Zoning Regulations (BCZR) to allow a 58" high fence in lieu of the maximum permitted 42". The subject property and requested relief are more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Zoning Variance.

This matter was originally filed as an administrative variance, pursuant to Section 26-127 of the Baltimore County Code. That section allows variance relief to be granted in certain circumstances without a public hearing. Such relief may be granted only for owner/occupied residential property, and if a request for public hearing is not made by an adjacent property owner. In this case, following the posting of the property, a request for hearing was made by several neighbors, including Patrick Ward, Robert Reilley, James Hancock and Sharon Michael. Thus, the matter was scheduled for public hearing.

Appearing at the public hearing held for this case was Joseph G. Bittle, Jr., and Lois J. Bittle, co-Petitioners/property owners. Also present was Norman Lauenstein, their attorney. Appearing in opposition to the request were the aforementioned Patrick Ward, Robert Reilley and James Hancock.

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Date

By

7/22/96
M. H. H. H.

Consideration of the issues presented, in this case, is made difficult due to the unique nature of this property as waterfront. That is, the property is located adjacent to a bend in Norman Creek. A review of the site plan shows that the property is rectangular in shape with the southern and eastern sides of same abutting the creek. To the north, the property adjoins Wye Road, immediately across from that roadway's intersection with St. George Road. On the fourth side (the west), the property shares a common boundary with the property known as 358 Wye Road, owned by Patrick and Anita Ward.

In any event, Mr. Bittle testified that he has owned and resided on the property for approximately 22 years. He stated that in September of 1994, he decided to replace a chain link fence on the eastern side of the property line with a wooden fence. Apparently, this was done, in part, in view of the fact that a house was being constructed on the Ward property and Mr. and Mrs. Bittle wanted more privacy. A permit was applied for and issued for the fence. It is of particular note that the application for the permit indicates that the Petitioners were requesting approval to erect a fence "along rear/side property of existing single family dwelling." Ultimately, the permit was issued and the fence constructed. In fact, the fence is in existence, as shown in numerous photographs submitted by both sides and confirmed during two site visits to the property conducted by this Zoning Commissioner. The fence is 58" high and provides a solid screen along the Bittle/Ward property line. Mr. Bittle testified that his neighbors did not complain when the fence was being constructed and he believes that same is appropriate for the location.

The waterfront characteristic of the property impacts the determination of what is the front of the property. In most cases, the front of a given property is designated as that side of a lot which has frontage on a

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By

public road. That is, most dwellings or buildings are oriented towards the public road which they adjoin. However, waterfront property is unique. Unlike other types of property, most homes on the water are oriented away from the street (i.e., towards the water). This Zoning Commissioner, as well as the Board of Appeals, has consistently held that the front of waterfront property is that side of the site which faces the water. The issue is complicated here in that the property has water frontage on two sides. As noted above, both the east side of the property and south side of the site abut Norman Creek.

Based upon my site examination, as well as the photographs and site plan submitted, I believe that the holding set forth above should be followed in this case. That is, the front yard of this lot is either on the east side or south side. Having determined that the front yard is on the water side, the next determination necessary is a finding of which of the two water side yards is in the front yard. If the front yard is towards the south, variance relief would not be necessary. In that case, the fence at issue would be located in front of the lateral projection created by the dwelling and would be in the front yard of the subject property and, therefore, not subject to Section 427 of the BCZR. (See Section 427A which prohibits the erection of fences in the side and rear yards of lots which adjoins the front yard of other residences).

However, upon further review, I believe that the front yard of this lot is on the east side. Thus, the fence at issue runs along the entire rear yard of the site; i.e., the sliver of land between the Bittle/Ward property line and the dwelling is the the Petitioners rear yard. The areas between the street and house and water to the south are the side yards, and the land to the east of the house between the dwelling and the creek is the front yard. This determination is made based on the orienta-

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Date

7/22/96

By

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tion of the house, as well as the Petitioners own site plan, which shows the front of the dwelling facing the east. In view of this finding, the subject fence is, therefore, in the rear yard and is subject to Section 427 of the BCZR.

In addition to the Petitioner's testimony, testimony was received from several of the neighbors who appeared in opposition to the request. They believe that the fence is inappropriate and blocks their view of the creek. I paid particular attention to this contention during my site visits, which were conducted both before and after the Spring season when trees on the subject property were in bloom.

In my judgment, the location and height of the fence is not inappropriate. I do not concur with the Protestants' assertions that the fence blocks their view. The Petitioners' side property line is heavily landscaped and it is this plant material which limits the view of the Protestants. The fence is not of an inappropriate height to cause such an effect. Moreover, the fence is but 16" higher than allowed. That dimension is of no practical significance since, so far as the view is concerned.

I am appreciative of the Protestants' concern about the construction of a large building atop the pier extending into the creek. This pier and building were constructed to provide harbor and protection for marine craft owned by the Petitioners. Although this structure does block the view and is arguably detrimental to the neighbors, it is not an issue for consideration before me. Rather, I must evaluate only whether the Petition for Variance for the fence should be granted.

Based upon the cumulative testimony and evidence presented, I am persuaded that the Petition should be granted. I am convinced that the Petitioners have met their burden under Section 307 of the BCZR, as construed by the case law. The uniqueness of the property is found by its

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Date

By

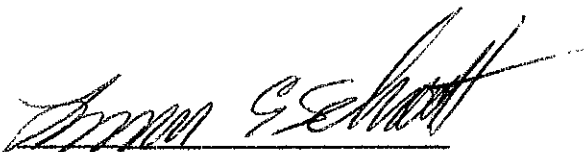
7/22/96
M. G. Hark

peculiar shape and, as observed above, its unusual orientation towards the water. Moreover, the Petitioners would suffer a practical difficulty if variance relief were not granted. As noted above, the house on the Ward property was recently constructed and I am appreciative of the Petitioners' desire for a privacy fence in view of the close proximity of that building. Lastly, as discussed above, I find no evidence of an adverse impact on the neighborhood.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of July, 1996 that a variance from Section 427 of the Baltimore County Zoning Regulations (BCZR) to allow a 58" high fence, in lieu of the maximum required 42", be and is hereby GRANTED, subject, however, to the following restriction which is a condition precedent to the relief granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING

Date

By

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5-9-97

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
<u>JOSEPH G. BITTLE, JR., ET UX</u>	*	OF
FOR A VARIANCE ON PROPERTY	*	BALTIMORE COUNTY
LOCATED ON THE SOUTH SIDE	*	CASE NO. 96-104-A
WYE ROAD, 15' SOUTH OF THE	*	
CENTERLINE OF ST. GEORGE ROAD	*	
(360 WYE ROAD)	*	
15TH ELECTION DISTRICT	*	
7TH COUNCILMANIC DISTRICT	*	
* * * *		

O P I N I O N

Patrick Ward and James Hancock filed a timely appeal from the Zoning Commissioner's decision, dated July 22, 1996, granting a variance from Section 427 of the Baltimore County Zoning Regulations (BCZR) to allow a 58-inch high fence in lieu of the maximum permitted height of 42 inches on the residential property at 360 Wye Road in the Middleborough section of Baltimore County. The Petitioners and owners of the subject site are Joseph G. Bittle and his wife Lois. Neither Appellants nor Petitioners were represented by counsel.

Petitioner Joseph Bittle related that he and his wife had purchased 360 Wye Road 23 years ago with an existing house on the property. Mr. Bittle said that the location and the position of the house has not been changed, although the structure itself has been enlarged. As evidence, Mr. Bittle provided current photographs as well as photographs taken by the original owners in the 1970s showing that the property abuts Norman Creek on the south and east sides, and that the house is oriented toward the waterside. He further explained that a chain link fence was in existence on the west side of the property at the time of purchase. This boundary fence is the area in question in this case.

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Furthermore, within 6 months of the purchase, the neighbors to the west, the Pages, informed the Bittles that the fence was actually 2 feet on their property, but that they had no problems with it as it existed.

Mr. Bittle testified that he had continued to maintain that fence line from time of purchase until 3 years ago, when Patrick Ward purchased the former Page property (lot 168). At that time, Mr. Ward wished to take down the fence and replace it with a hedge on the accurate boundary line. Mr. Bittle indicated that he wanted a fence and not a hedge. A survey of the property line was conducted at Mr. Ward's expense.

On September 23, 1994, Mr. Bittle applied for and was issued a permit for a fence in the rear yard. The wooden, picket-type fence was erected on his property at 48 inches high without, according to Mr. Bittle, any complaints from neighbors. On November 29, 1994, the fence was approved by the building inspector, but on January 26, 1995, Mr. Bittle testified that he received a zoning violation notice relative to the height of the fence.

Mr. Bittle further testified that his lot is unique in that it is bordered on two sides by water and slopes down 8 to 10 feet lower in elevation than neighboring lots. This waterside, he ascertained, is actually the front yard of his property, and, therefore, the fence is constructed in the rear yard. Further, he explained that there would be a practical difficulty and financial hardship in replacing the existing fence with another only

minimally lower.

Further, he expressed concern that a lower fence would pose problems with large dogs in the neighborhood which would be able to jump a lower fence from the higher elevation into his yard. Also, he had additional concerns that his young grandchildren might be able to get out of the yard without an adequate fence in place, thereby creating a safety hazard.

Mrs. Bittle testified that the fence at the roadside of the subject property has existed for 15 years, and that they had built the new fence to match the existing one.

Appellant James Hancock of 354 Wye Road indicated that he had no comments to make.

Patrick Ward, Appellant, testified that he was using his property next to the subject property as a vacation home at present, but that he expected to move there permanently in the future. He indicated that he had no problem with the new fence except for the height which he felt interfered with his view of the water. He indicated that he did not agree that the fence was in the "rear" yard of the property, as Mr. Bittle testified.

On that question, it is the opinion of this Board that waterfront property is unusual in that the front yard has consistently been regarded by both the Zoning Commissioner and this Board to be that side of the site which faces the water. This is appropriate in this case in that evidence proves that the Bittle residence is and has always been oriented toward the water and away from the public street in the rear.

Section 307 of the BCZR permits granting of a variance upon certain terms and conditions, which, in pertinent part in this case, allow a variance where special circumstances or conditions exist that are peculiar to the land which is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

Under the Court of Special Appeals decision in Cromwell v. Ward, 102 Md.App. 691 (1995), the first burden of the petitioner for variance is to prove that the property is unique. This standard must be met first before other parts of the variance requirements can be properly considered. The Board finds that the Bittle property is unique from other properties in the area in that the topography is different. The lot is two-sided on the water, it is sloped differently from the others with no banks at the water, and it is considerably larger.

The second prong for granting of a variance speaks to practical difficulty or unreasonable hardship. The Board finds that practical difficulty and unreasonable hardship would occur if the Petitioners were required to tear down a fence constructed with a legal permit and replace it with another. We believe that the safety and health of people on the Bittle property is a major factor, and that the neighbors are not adversely affected by the fence as it exists.

For these reasons, the petition for a variance from Section 427 of the BCZR to allow a fence 58 inches in height in lieu of the

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maximum permitted of 42 inches shall be granted.

O R D E R

THEREFORE, IT IS THIS 9th day of May, 1997

by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's request for variance from Section 427 of the Baltimore County Zoning Regulations to allow a 58-inch high fence in lieu of the maximum permitted 42 inches be and the same is hereby GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

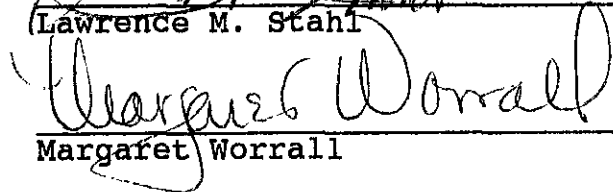
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Charles L. Marks, Acting Chairman



Lawrence M. Stahl



Margaret Worrall



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 9, 1997

Mr. Patrick Ward
358 Wye Road
Baltimore, MD 21221

Mr. James Hancock
354 Wye Road
Baltimore, MD 21221

RE: Case No. 96-104-A
Joseph G. Bittle, Jr., et ux

Gentlemen:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Rochette for
Kathleen C. Bianco
Legal Administrator

encl.

cc: Mr. & Mrs. Joseph G. Bittle, Jr.
Mr. Robert Reilley
Ms. Sharon Michael
People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

July 22, 1996

Norman Lauenstein, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Case No. 96-104-A
Petition for Zoning Variance
Joseph G. Bittle, Jr., et ux, Petitioners
Property 360 Wye Road

Dear Mr. Lauenstein:

Enclosed please find the decision rendered in the above captioned case. The Petition for Variance has been granted, with restriction, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

c: Mr. and Mrs. Joseph G. Bittle, Jr.
c: Mr. Patrick Ward
Mr. Robert Reilley
Mr. James Hancock
Mrs. Sharon Michael

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Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 360 Wye Road
address
Baltimore, MD 21221
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address: (indicate hardship or practical difficulty)

The issuance of the permit; the approval by the inspector; the timeline
for notification, and the physical and financial hardship imposed if the fence
has to be re-done.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Joseph G. Bittle Jr.
(signature)
Joseph G. Bittle Jr.
(type or print name)



Lois J. Bittle
(signature)
Lois J. Bittle
(type or print name)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 12th day of September, 1988, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

J. Maryland, County of Baltimore
the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Sept 21/1988
date

Monte S. Baker
NOTARY PUBLIC

My Commission Expires: Sept 11/1998

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Petition for Administrative Variance to the Zoning Commissioner of Baltimore County

for the property located at

96-104-A

360 Wye Road, Balto. MD 21221

which is presently zoned

D.R.5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

To permit a 58-inch high fence in lieu of the maximum required 42 inches.
Section 427 Fences Bill No. 111, 1986

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

The issuance of the permit; the approval from the inspector; the timeline for notification and the physical and financial hardship imposed if the fence must be replaced.

Please see attached for detail.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

Legal Owner(s):

Joseph G. Bittle, Jr.

(Type or Print Name)

Signature

Lois J. Bittle

(Type or Print Name)

Signature

360 Wye Road

410-682-4230

Address

Phone No.

Baltimore,

MD

21221

City

State

Zipcode

Name, Address and phone number of representative to be contacted at

Joseph G. Bittle, Jr.

Name

360 Wye Road

410-574-2900 (o)

Address

Phone No.

A Public Hearing having been requested and/or found to be required, It is ordered by the Zoning Commissioner of Baltimore County, this ____ day of ____, 19____ that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

Zoning Commissioner of Baltimore County

REVIEWED BY:

DATE:

9-15-95

Printed with Soybean Ink
on Recycled Paper

ITEM #:

122

Zoning Description

96-104-A

ZONING DESCRIPTION FOR 360 Wye Road, Baltimore, MD 21221

Beginning at a point on the South side of
Wye Road which is 30 feet

wide at the distance of 15 feet south of the

centerline of the nearest improved intersecting street St. George Road

which is 30 feet wide. We are at the end of Wye & St

George Roads. LOT # 169.

In the subdivision of Middleborough

as recorded in Baltimore County Plat Book # 4, Folio # 191,

containing 19,085 sq. ft.. Also known as 360 Wye Road

and located in the 15 Election District, 7 Councilmanic Distric.

Item # 122

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 122 Petitioner: Joseph G. Bittle, Jr.

Location: 360 Wye Road Baltimore, MD 21221

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Joseph G. Bittle, Jr.

ADDRESS: 360 Wye Road

Baltimore, MD 21221

PHONE NUMBER: 410-682-4230 Home 410-574-2900 Office

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

September 21, 1995

NOTICE OF CASE NUMBER ASSIGNMENT

Re: CASE NUMBER: 96-104-A (Item 122)
360 Wye Road
S/S Wye Road, 15' S of c/l St. George Road
15th Election District - 7th Councilmanic

Please be advised that your Petition for Administrative Zoning Variance has been assigned the above case number. Contact made with this office regarding the status of this case should reference the case number and be directed to 887-3391. This notice also serves as a refresher regarding the administrative process.

- 1) Your property will be posted on or before September 24, 1995. The closing date (October 10, 1995) is the deadline for a neighbor to file a formal request for a public hearing. After the closing date, the file will be reviewed by the Zoning or Deputy Zoning Commissioner. They may (a) grant the requested relief, (b) deny the requested relief, or (c) demand that the matter be set in for a public hearing. You will receive written notification as to whether or not your petition has been granted, denied, or will go to public hearing.
- 2) In cases requiring public hearing (whether due to a neighbor's formal request or by Order of the Commissioner), the property will be reposted and notice of the hearing will appear in a Baltimore County newspaper. Charges related to the reposting and newspaper advertising are payable by the petitioner(s).
- 3) Please be advised that you must return the sign and post to this office. They may be returned after the closing date. Failure to return the sign and post will result in a \$50.00 charge.

PLEASE UNDERSTAND THAT ON THE DATE AFTER THE POSTING PERIOD, THE PROCESS IS NOT COMPLETE. THE FILE MUST GO THROUGH FINAL REVIEW. ORDERS ARE NOT AVAILABLE FOR DISTRIBUTION VIA PICK-UP. WHEN READY, THE ORDER WILL BE FORWARDED TO YOU VIA FIRST CLASS MAIL.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Joseph and Lois Bittle

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TO: PUTUXENT PUBLISHING COMPANY

October 19, 1995 Issue - Jeffersonian

Please forward billing to:

John Bittle, Jr.
360 Wye Road
Baltimore, MD 21221
682-4230

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-104-A (Item 122)

360 Wye Road

S/S Wye Road, 15' S of c/l St. George Road

15th Election District - 7th Councilmanic

Legal Owner: Joseph G. Bittle, Jr. and Lois J. Bittle

Variance to permit a 58-inch fence in lieu of the required 42-inch fence.

HEARING: MONDAY, NOVEMBER 13, 1995 at 3:00 p.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 12, 1995


NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-104-A (Item 122)
360 Wye Road
S/S Wye Road, 15' S of c/l St. George Road
15th Election District - 7th Councilmanic
Legal Owner: Joseph G. Bittle, Jr. and Lois J. Bittle

Variance to permit a 58-inch fence in lieu of the required 42-inch fence.

HEARING: MONDAY, NOVEMBER 13, 1995 at 3:00 p.m. in Room 118, Old Courthouse.


Arnold Jablon
Director

cc: Joseph and Lois Bittle
Pat Ward
Robert Reilley
James Hancock
Sharon Michael

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

November 27, 1996

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. 96-104-A

JOSEPH G. BITTLE, JR., et ux -Petitioners
S/s Wye Road, 15' S of c/l of St. George Road
(360 Wye Road)
15th Election District
7th Councilmanic District

VAR -To allow a 58" high fence in lieu of
maximum permitted 42".

7/22/96 -Z.C.'s Order in which Petition for
Variance is GRANTED.

ASSIGNED FOR: THURSDAY, FEBRUARY 6, 1997 at 10:00 a.m.

cc: Mr. and Mrs. Joseph G. Bittle, Jr. Petitioners

Patrick Ward
James Hancock

Appellant /Protestant
Appellant /Protestant

Robert Reilley
Sharon Michael

~~Norman Lauenstein, Esquire~~ out

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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Kathleen C. Bianco
Legal Administrator



96-104-1A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 157 Date of Posting 9/23/85
Posted for: Variance
Petitioner: Joseph & Lois Bittle
Location of property: 360 Wye Rd.
Location of Sign: Facing road way on property being zoned
Remarks: _____
Posted by: Anthony Date of return: 9/29/85
Number of Signs: 1

MICROFILMED



BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

NO.

000250

DATE 9-15-95 ACCOUNT R-001-015-000

96-104-A

AMOUNT \$ 85.00

RECEIVED FROM: BITTLE

010 -- variance \$50 ITEM # 122
080 -- sign \$35 TAKEN BY: JRF

FOR: \$85

MICROFILMED

0360340042MICRC
BA C002:46PM09-15-95

\$85.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

96-104-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 15th Case No: 96-104-A Date of Posting 9/27/96
Posted for: _____
Petitioner: Joseph G. Buttle, JR
Location of property: 360 WYE ROAD

Location of Signs: _____

Remarks: _____
Posted by: [Signature] Date of return: 9-27-96
Number of Signs: 1



MICROFILMED

Case No. 96-104-A

Joseph G. Bittle, Jr., et ux - Petitioners

S/s Wye Road, 15' S of c/l of St. George Road
(360 Wye Road)

15th Election District

Appealed: 8/19/96

(see attached vicinity map)

MICROFILMED

COPY OF PER EA. #1

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 024782

DATE 8/19/96 ACCOUNT R-001-6150

AMOUNT \$ 210.00

RECEIVED FROM: James L. Hancock

FOR: Variance Appeal 175.00
Sign 35.00
210.00

MICROFILMED

03A91#0245MICHRC

\$210.00

BA C002:29FMD8-19-96

VALIDATION OR SIGNATURE OF CASHIER

RYE

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204, at 10:00 A.M. on Thursday, 1/18. On Court House 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #96-104-A
(Item 122)

360 Wyre Road
S/S Wyre Road, 15 S of A St
George Road

15th Election District

7th. Councilmanic

Legal Owner(s):

Joseph G. Bittle, Jr. and Lois

J. Britte

HEARING: Monday, Novem-

ber 13, 1995 at 3:00 p.m. in
3m 118 Old Court

Am. 118, Old Courthouse
 Variance to permit

Advantage: To permit a 38-inch fence in lieu of the no-

80-inch fence in lieu of the required 42-inch fence.

LAWRENCE E. SCHMIDT

LAWRENCE E. SCHMIDT
Zoning Commissioner for

**County Commissioner for
Baltimore County**

NOTES: (1) Hearings are

handicapped Accessible, for

special "accommodations"

Please Call 887-3353.

(2) For information concern-

ing the File and/or Hearing.

Please Call 887-3391.

of the Board

229 Oct 19.

TOWSON, MD., 10/23, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/19, 1995.

THE JEFFERSONIAN,

P. A. Henshaw

LEGAL AD. - TOWSON

MICROFILMED

APPEAL

Petition for Zoning Variance
S/S Wye Road, 15 ft. S of c/l of St. George Road
(360 Wye Road)
15th Election District - 7th Councilmanic District
Joseph G. Bittle, Jr., et ux - Petitioners
Case No. 96-104-A

Petition for Administrative Variance

Description of Property

Certificate of Posting

Zoning Advisory Committee Comments

Petitioner(s) and Citizen Sign-In Sheets

Petitioners' Exhibits: 1 - Plat to Accompany Variance
 2 - Site Plan
 3A-3S - Nineteen Photographs
 4A-4B - Two Photographs

Protestants' Exhibits: 1A-10 - Fifteen Photographs

Thirteen Photographs Not Marked as Exhibits

Building Permit #B-213120 and Application for Building Permit

Memorandum from J. G. Bittle, Jr. to the Director of Permits and
Development Management dated September 15, 1995

Letter of Opposition

Two Miscellaneous Correspondence

Zoning Commissioner's Order dated July 22, 1996 (Granted)

Notice of Appeal Received on August 19, 1996 from Pat Ward and James
L. Hancock

c: Mr. and Mrs. Joseph G. Bittle, Jr., 360 Wye Road, 21221
Mr. Patrick Ward, 358 Wye Road, 21221
Mr. Robert Reilley, 356 Wye Road, 21221
Mr. James Hancock, 354 Wye Road, 21221
Mrs. Sharon Michael, 352 Wye Road, 21221
Norman Lauenstein, Esquire, 809 Eastern Boulevard, 21221
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

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11/27/96 -Notice of Assignment for hearing scheduled for Thursday,
February 6, 1997 at 10:00 a.m. sent to following:

Mr. and Mrs. Joseph G. Bittle, Jr.
Patrick Ward
James Hancock
Robert Reilley
Sharon Michael
Norman Lauenstein, Esquire
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

12/03/96 -Letter from N. Stone; no longer in case. File noted.

2/06/97 -Hearing concluded before Board; scheduled for deliberation on
2/27/97; notices to be sent. (C.L.W.)

2/14/97 -Notice of Deliberation sent to parties; scheduled for
deliberation on Thursday, February 27, 1997 at 9:45 a.m.; copy of
Notice to C.L.W.

2/27/97 -Deliberation concluded; Petition for Variance GRANTED; Order to
be issued with appellate period running from date of written Order.

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BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

TOWSON, MARYLAND 21204

John R. Reing
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B213120 CONTROL #: MR DIST: 15 PREC: 18
DATE ISSUED: 09/23/94 TAX ACCOUNT #: 1512840200 CLASS: 34

PLANS: CONST 0 PLOT 1 R-PLAT-0-DATA 0 ELEC NO PLUM NO
LOCATION: 360 WYE RD
SUBDIVISION: MIDDLEBOROUGH

OWNERS INFORMATION
NAME: BITTLE, JOSEPH GEORGE
ADDR: 360 WYE RD 21221

TENANT:
CONTR: OWNER
ENGR:
SELLR:
WORK: ERECT 6' HIGH WOOD FENCE IN REAR YARD. ANY
FENCE ERECTED WITHIN AN EASEMENT MUST BE
REMOVED AT OWNER'S EXPENSE. CANNOT FENCE IN
WALKWAY EASEMENTS. 213 LF.

THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

ESTIMATED \$ PROPOSED USE: SFD + FENCE
200.00 EXISTING USE: SFD

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: OTHER - RESIDENTIAL

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC

DPL 114-11-74

LOT SIZE AND SETBACKS

SIZE: 85WIDTH

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

SIDE STR SETB:

REAR SETB: 0'

Item # 122

BALTIMORE COUNTY, MARYLAND
Department of Permits and Licenses
Office of Buildings Engineer
County Office Building
Towson, Maryland 21204

Telephone: 887-3957

Part Of Building Inspected

Approved ()

Disapproved ()

Remarks:

11/20/94
Date

W. H. H. H.
Building Inspector

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

MICROFILMED

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

DATE: 23 Sep 94

OEA: JP/COP
HISTORIC DISTRICT/BLDG.

PERMIT #: B 213120
RECEIPT #: A 233057
CONTROL #: MR
XREF #:

PROPERTY ADDRESS 360 WYE ROAD
13067 MONTIC, MD. 21221
YES ☐ NO ☒
SUBDIV: MIDDLER BOND
DO NOT KNOW ☐
TAX ACCOUNT #: 15-12-840200 DISTRICT/PRECINCT
OWNER'S INFORMATION (LAST, FIRST) 15 18
NAME: BITTLE, J. JOSEPH GEORGE
ADDR: 360 WYE RD. BALTO. MD. 21221

FEE: 10.00
PAID: 10.00
PAID BY: Appl
INSPECTOR:

DOES THIS BLDG.
HAVE SPRINKLERS
YES ☐ NO ☐

I HAVE CAREFULLY READ THIS APPLICATION
AND KNOW THE SAME IS CORRECT AND TRUE,
AND THAT IN DOING THIS WORK ALL PROVI-
SIONS OF THE BALTIMORE COUNTY CODE AND
APPROPRIATE STATE REGULATIONS WILL BE
COMPLIED WITH WHETHER HEREIN SPECIFIED
OR NOT AND WILL REQUEST ALL REQUIRED
INSPECTIONS.

BUILDING 1 or 2 FAM.

APPLICANT INFORMATION
NAME: JOSEPH G. BITTLE, JR
COMPANY:
STREET 360 WYE RD
CITY, ST, ZIP BALTO. MD. 21221
PHONE #: 682-4230 MHC LICENSE #:
APPLICANT SIGNATURE: [Signature] TRACT: BLOCK:
PLANS: CONST 0 PLOT 1 PLAT 0 DATA 0 EL 2 PL 2
TENANT:
CONTR: OWNER
ENGR:
SELLR:

CODE CODE
93 BOCA CODE
TYPE OF IMPROVEMENT
1. ☒ NEW BLDG CONST
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK: Erect a 6' high wood fence along
rear side property of R.C. SFD. Any fence erected within AN
EASEMENT must be removed @ owner's expense, if required.
cannot fence walkway easements. L.F.
273.

TYPE OF USE

RESIDENTIAL

NON-RESIDENTIAL

- 01. ONE FAMILY
- 02. TWO FAMILY
- 03. THREE AND FOUR FAMILY
- 04. FIVE OR MORE FAMILY
(ENTER NO UNITS)
- 05. SWIMMING POOL
- 06. GARAGE
- 07. OTHER FENCE

- 08. AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
- 09. CHURCH, OTHER RELIGIOUS BUILDING
- 10. FENCE (LENGTH HEIGHT)
- 11. INDUSTRIAL, STORAGE BUILDING
- 12. PARKING GARAGE
- 13. SERVICE STATION, REPAIR GARAGE
- 14. HOSPITAL, INSTITUTIONAL, NURSING HOME
- 15. OFFICE, BANK, PROFESSIONAL
- 16. PUBLIC UTILITY
- 17. SCHOOL, COLLEGE, OTHER EDUCATIONAL
- 18. SIGN
- 19. STORE MERCANTILE RESTAURANT
SPECIFY TYPE
- 20. SWIMMING POOL
SPECIFY TYPE
- 21. TANK, TOWER
- 22. TRANSIENT HOTEL, MOTEL (NO. UNITS)
- 23. OTHER

TYPE FOUNDATION BASEMENT
1. SLAB 1. FULL
2. BLOCK 2. PARTIAL
3. CONCRETE 3. NONE

TYPE OF CONSTRUCTION TYPE OF HEATING FUEL TYPE OF SEWAGE DISPOSAL
1. MASONRY 1. GAS 3. ELECTRICITY 1. PUBLIC SEWER EXISTS PROPOSED
2. WOOD FRAME 2. OIL 4. COAL 2. PRIVATE SYSTEM
3. STRUCTURE STEEL SEPTIC EXISTS PROPOSED
4. REINF. CONCRETE TYPE OF WATER SUPPLY PRIVY EXISTS PROPOSED

CENTRAL AIR: 1. 2. 1. PUBLIC SYSTEM EXISTS PROPOSED
ESTIMATED COST: \$ 200.00 2. PRIVATE SYSTEM EXISTS PROPOSED
OF MATERIALS AND LABOR
PROPOSED USE: SFD & Fence
EXISTING USE: SFD

OWNERSHIP
1. PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS: 6. HIRISE
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS 34
POWDER ROOMS KITCHENS LIBER 04 FOLIO 191 Imp.

BUILDING SIZE LOT SIZE AND SETBACKS APPROVAL SIGNATURES DATE
FLOOR 203 SIZE 85'x BLD INSP : :
WIDTH FRONT STREET BLD PLAN : :
DEPTH SIDE STREET FIRE : :
HEIGHT 6' SIDE SETBK NL SEDI CTL : :
STORIES FRONT SETBK NL/00 NL ZONING: R-109 Rural SDF : 9-23-94
LOT # 3 SIDE STR SETBK SIDE SETBK PUB SERV : :
CORNER LOT REAR SETBK 0000 ENVRMNT : :
1. Y 2. N ZONING DL-S.S. PERMITS 205 : :
MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

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Item # 122



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 14, 1997

NOTICE OF DELIBERATION

Having concluded this case on February 6, 1997, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

JOSEPH G. BITTLE, JR., ET UX -Petitioners
CASE NO. 96-104-A

DATE AND TIME : Thursday, February 27, 1997 at 9:45 a.m.

LOCATION : Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Legal Administrator

cc:	Mr. and Mrs. Joseph G. Bittle, Jr.	Petitioners
	Patrick Ward	Appellant /Protestant
	James Hancock	Appellant /Protestant
	Robert Reilley	
	Sharon Michael	
	People's Counsel for Baltimore County	
	Pat Keller, Director /Planning	
	Lawrence E. Schmidt, Zoning Commissioner	
	Arnold Jablon, Director /PDM	
	Virginia W. Barnhart, County Attorney	

Copied: C.L.W.



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Joseph G. Bittle, Jr., et ux -Petitioners
Case No. 96-204-A

DATE : February 27, 1997

BOARD /PANEL : Charles L. Marks, Acting Chairman (CLM)
Lawrence M. Stahl (LMS)
Margaret Worrall (MW)

SECRETARY : Kathleen C. Bianco
Legal Administrator

The Board convened for public deliberation of the subject matter; testimony and evidence received at hearing of February 6, 1997. People's Counsel did not participate in these proceedings.

CLM: I'm not going to say too much about the open meetings law since my associate, Mr. Stahl, has already indicated the purpose of it, and I believe the Bittles were present during that meeting [prior deliberation]. We are required to conduct an open deliberation and that is our purpose here today. Each of us has had an opportunity to review our notes, the testimony, exhibits and evidence. Larry, will you go first?

LMS: My comments previously, in deference, will apply here, from the last deliberation; can be summarized and I will adopt them:

[Excerpt from deliberation/ York Manor Swim Club - 2/27/97: I'm generally placed on the record for my opinion of the open deliberation process. It is a well-meaning mistake by the powers that be. I believe that it, to some degree, stifles the determinations of this Board -- limits and has a chilling effect on the free interplay of ideas among those who are not trained judicial people. We are lay people, business people, attorneys -- a microcosm of the Baltimore County community. The result of legislation and court ruling is not in the best interest of all concerned. My oft repeated belief is that our brethren in the Circuit Court would not want to decide their cases in an open forum. I understand that, and wonder why they have made it more difficult for the rest of us. Having said that, we will carry out our function.]

We are here for the question of a variance. We had testimony; looked at it; heard from everybody. Often we get inundated with charts and paper; in this case, it was helpful for me.

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There are two questions here: first, aside from Cromwell questions of unique and unreasonable hardship -- question of where is the front and where is the back. The question of effect on other folks in the area; neighbors and that sort of thing. Taking the easy one first; both are essentially easy -- where is the front of the house? Where it has always been. Is that different from other lots, based on the lay of the land? Yes, it's different. I live on a corner lot. My house sits differently than other houses on the lot due to the topography. It's not a big question here. The front is the front as delineated by the front of Mr. Bittle's house.

Getting to the question of height of the fence, what they would have a right to do; if they have a fence higher than required, do we give them the variance?

Variance law is one of the clearer areas we deal with; as you all know, it's based on Cromwell, and Section 307.1 of the zoning regulations. Essentially says it is a two-step test:

(1) Is it unique -- is the property unique when compared to others in surrounding area, not on construction but on topography.

(2) If unique, is following of zoning ordinance a matter of unreasonable hardship to the owner? And, in fact, is it self-inflicted? And is the result one which is contrary to the spirit and intent of the zoning regulations if allowed to be done under the variance.

I will take in sequence. Is it unique as compared to other properties? I think clearly it is. It is two-sided on the water. It is sloped differently. It is considerably larger. The construction of the house really is not a factor, but as a practical matter, everybody would see that the front of the lot was where the front of the house has always been. Any testimony to the contrary came up as a result of this controversy, not before. Topography is different. Its view of the world is different simply because the topography requires, gives the owners the option which 20+ years ago was exercised -- had we had a matter where the front of the house had been altered or it was an empty lot and a new house was built utilizing that -- might have been self-inflicted. Maybe I would have a problem with that, but here, I don't think there is any question and I am satisfied that it is sufficiently unique.

Second Cromwell test is whether to require the owner to abide by the existing requirements would visit unreasonable hardship. There is the issue of safety; about the dogs; what

is reasonable is always what is reasonable; it's reasonable to be able to enjoy your property; I think it's reasonable for someone to be able to enjoy their property in safety and convenience. All the testimony about what you could see and could not see -- did not really change. I don't think it helped in the decision one way or another.

I'm going to hang my hat on the safety, of children and grandchildren and visitors. A hedge does not stop animals. It does not keep your own animals, your own grandchildren in the yard. You can go through a hedge, but not a fence. Security, control, safety -- could let animals and children out to play; do not have to stand there and watch them; protection from intrusion or leaving property.

It's unreasonable to say that, even though the property is unique and always laid out this way, that you cannot have that because zoning regulations prohibit height. Does the height of the fence really alter that? Does change from what is allowed to what the Bittles are going to have -- is that qualitative difference significant enough to say they have to have it? Do you need the variance? It's a sloping property, as I recall -- because of the lay of the land that in order to bring it even, you had to make the difference. That's true. Again, we all harken back to our own experiences. To put a fence at a certain level would provide no screening, no protection. I'm okay as far as that is concerned.

As to spirit and intent of zoning -- and we get into who can see what and seeing the water, and so forth. There was testimony that the fence as proposed, because of the slope of the land, would bring the fence up to the level of other fences. It's not like everyone else's is to one height and the Bittles would be up here and sticking out. Unless you know, 6 weeks later you could not possibly tell where one fence was lesser than another in size.

In sum and substance, although we don't do this very often, I'm inclined to grant the variance and allow them to do that which they request.

MW: I arrived at the same decision, perhaps from a slightly different, and only slightly different, reasoning. Certainly the testimony was extensive and photographs were very helpful to me -- sight distances and that sort of thing. Again, in my opinion, the issue is a classic variance case to be decided by the two-prong test as Mr. Stahl indicated. I agree that the lot, because of configuration, is unique and follows that first part -- passes the first standard. It's set apart from others in the neighborhood.

I looked at practical difficulty and hardship slightly differently in that I felt that the subject property -- the owners of the property built the fence with a valid building permit; given the variance in height and the fence was duly inspected and approved, and only after the fact, the question came on this.

So looking at the photographs, it seems to me that there was not any detrimental effect on the rest of the neighbors. The fence, as you pointed out, Larry, from a sight standpoint, is on very much the same level as other fences in the neighborhood. No problem for other neighbors in what was happening because of the fence. It's simply a practical difficulty and financial hardship to require this fence to be lowered several inches to comply.

LMS: I think both are valid.

MW: Absolutely. I think the safety issue is valid; we had to raise a fence in an area where there was a slope because at that point our dog could jump over it - at that point. It had to be altered in that spot. I also would agree that it should be granted.

CLM: I generally agree with my fellow Board members. This is not a particularly difficult case. This Board receives a substantial number of variances. In the two years that both Margaret and I have served on the Board, you could count on one hand the number of variances granted. The Code is specific -- when granted, must have specific justification for granting and must be stated in the Order. And because it can be appealed to the Circuit Court, it must be carefully written to show what we took into consideration on testimony and evidence in granting the variance, from the statute and case law. Ordinarily, these variance cases can be handled by zoning commissioner. However, if anyone protests, they come before this Board. Again, I took a great deal of time in reading my notes and the file.

There's no doubt but that the variance should be granted. Owned the property for many (22) years. Mr. Ward purchased his property two years ago; no sanction that neighbors will keep property in the same condition as when you bought yours. As long as it complies with the local standards. When he bought the property, he bought it subject to the fact that he may not always have the same view. The Bittles applied for a permit; received the permit for a fence 6 feet high; the fence was built in compliance with the permit. And even as the fence was being built, there were no complaints by the neighbors; only after it was built.

As Mr. Stahl has indicated, we have to apply the two-prong test under variance -- is it unique or different than others in the locale; no doubt, in looking at the site plan, that this is a unique portion which borders on two sides of Norman's Creek.

I also agree with the Zoning Commissioner's ruling that a variance is needed for the erection of the fence. The uniqueness problem -- I don't have difficulty with that. I agree with Margaret and Larry that it is unique.

As for practical difficulty, I also concur that the safety and health of people on the Bittles' property is a major factor. No problem with practical difficulty. The fence has already been constructed. The fact that it may be slightly higher than permitted by the Code does not materially affect -- even though higher than permitted, it does not alter the view from the neighbors along side Bittle property.

When I went to law school, there was a legal axiom - person who owns the ground also owns air rights. There's certainly nothing that would prohibit the Bittles from growing a hedge on their property that could preclude the view from the neighbors. No problem with fence or erection of a fence.

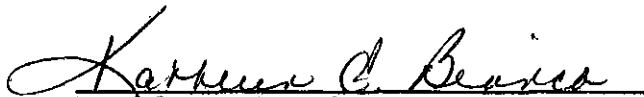
I would agree with my fellow Board members that a variance should be granted.

We are in agreement. A variance from 427 should be granted. It should be noted that the Board will be issuing a formal Opinion in the very near future, which will be distributed to all interested parties. Once issued, any party may appeal to the Circuit Court for Baltimore County.

Having no further business, this meeting is concluded.

* * * * *


Respectfully submitted,


Kathleen C. Bianco
Legal Administrator

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: November 3, 1997
Permits & Development Management

FROM: Charlotte E. Radcliffe 
County Board of Appeals

SUBJECT: Closed File: Case No. 96-104-A
JOSEPH G. BITTLE, JR., ET UX
15th E; 7th C

As no further appeals have been taken in the above captioned case, we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. 96-104-A)

MICROFILMED

LAUENSTEIN & LAUENSTEIN

ATTORNEYS AT LAW
First National Bank Building
809 Eastern Boulevard
Essex, Maryland 21221

NORMAN W. LAUENSTEIN
DOUGLAS C. LAUENSTEIN
MARY E. GEPHARDT

TELEPHONE
(410) 687-2299
TELEFAX
(410) 687-2616

December 2, 1996

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

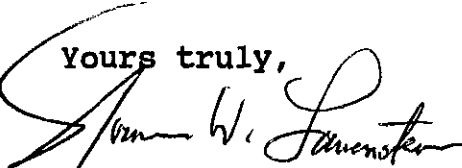
Re: Case No. 96-104-A
Joseph G. Bittle, Jr., et ux Petitioners

Dear Sir/Madam:

Thank you for your Notice of Assignment dated November 27, 1996 in reference to the above matter.

I have not entered my appearance in this matter and will not be representing the Petitioner. I did represent the Petitioner before at the Zoning Commission. However, I have not been retained for this matter.

Yours truly,



Norman W. Lauenstein

NWL:msw
cc: Mr. Joseph Bittle

1996 12-02-96

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file noted ✓

MEMORANDUM

September 15, 1995

Director of Permits and Development Management
Baltimore County, MD

96-104-A

Subject: Citation, civil zoning violation
Reference No. 96-58
Chronology of events

<u>Date</u>	<u>Issue</u>
9/23/94	Applied for permit and zoning approval to erect a fence. There was no mention of Code Section 427 or a copy of the code provided for review.
9/23/94- 11/29/94	<u>The fence was erected over a period of 67 days</u> at a height of <u>58 inches</u> as opposed to the 72 inch height noted on the permit. At no time did neighbors voice any complaints to me or to the zoning board (to my knowledge) while the fence was being erected.
11/29/94	The fence was approved by the building inspector.
1/26/95	I received notice of an alleged zoning violation, by mail, citing the height of the fence. <u>The time span</u> from the date of approval by the inspector to the receipt of the alleged violation was <u>58 days</u> ; <u>a total of 123 days</u> from the start of construction before I was advised of being in violation of any building codes. The area of the fence in question is on a slope from the back of the house to the water's edge. The neighboring properties are flat from their respective houses to the water's edge, creating an elevation of approximately 8-10 feet at the water's edge. This, in effect, places their existing chain link fence at approximately the same visual height as the fence in question.

I have resided at this address for 22 years. All improvements to the property have been made utilizing the appropriate permits and inspections. At no time would I knowingly expend my personal time, hard work and finances (for material costs or legal fees) in violation of county codes or zoning requirements. I rely on the Baltimore County Department of Permits and Licences to advise me accordingly, hence this alleged violation is not a result of my own actions. In this instance, I believe an unnecessary and unreasonable hardship is being

MICROFILMED

122

page two

96-104-A

imposed since the fence, as it exists, poses no encumbrance or diminished esthetic value for anyone. Therefore, I am requesting that relief be granted in that the spirit of the ordinance is observed and the public's safety and welfare are not at risk.

Respectfully Submitted,

J.G.Bittle Jr.

MICROFILMED

10/10/95

VJ.

Arnold Jablon
Director of Permits Development / Mgt
111 W Chesapeake Ave
Towson Md 21204
Rm 111
Ref: Case # 96-104-A

10/4/95

Dear Mr Jablon,
We the neighbors of 360 Wye Rd, (property in question),
would like to file formal opposition to the variance
requested in case # 96-104-A. We are doing so within the
stated closing date of 10/10/95. Please contact us by
mail at the following addresses to inform us of the hearing
date and location. We are enclosing a check for \$40 made
payable to Baltimore County as instructed by your office.
Thank you for your consideration in this matter.

Sincerely,

Pat Ward
358 Wye Rd
Baltimore Md 21221

Pat Ward

Robert Reilley
356 Wye Rd
Baltimore Md 21221

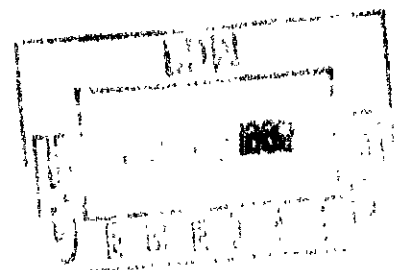
Robt Reilly

James Hancock
354 Wye Rd
Baltimore Md 21221

James Hancock

SHARON MICHAEL
352 WYE RD
BALTIMORE MD 21221

Sharon Michael



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Aug 19, 1996

MR JAULIN

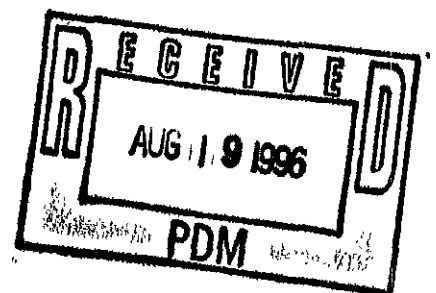
PLEASE BE ADVISED THE HOME OWNERS
AT ADDRESSES 358 WYE, 356 WYE, 354
WYE AND 352 WYE WISH TO FILE AN
APPEAL ON CASE # 96-104-A

Past WARD
358 WYE RD
BALTIMORE MD
686-3404 21221

James L Hancock
354 Wye Rd
Balt Md 21221

THANK YOU
Past Word
James L Hancock

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PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

J. B. Little
Norman L. Weinstein
Norman L. Weinstein

360 Wye Rd Bel Air Md
360 Wye Rd Bel Air Md
809 Eastern Blvd 21221



Printed with Soybean Ink
on Recycled Paper

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County Board of Appeals of Balto County

We are also protesting the privacy fence at 360 Wye Rd being 58" high instead of the "42" allowed by the building code that everyone else has there fence. Our taxes have gone up a large amount this year like 38,000.00 for a 3 year period, because our properties being of Waterfront, to have view being obstructed by a 58" privacy fence, by a person who inconsiderate of others, This person also has a boathouse on the end of his pier blocking the waterfront view, we are paying high taxes to enjoy this view.

Patricia Wood
 James L Hancock
 Lynn Edwards
 Mary Edwards
 C. R. Funn
 Billy Daulton
 Sharon Michael
 Leresa Rulley

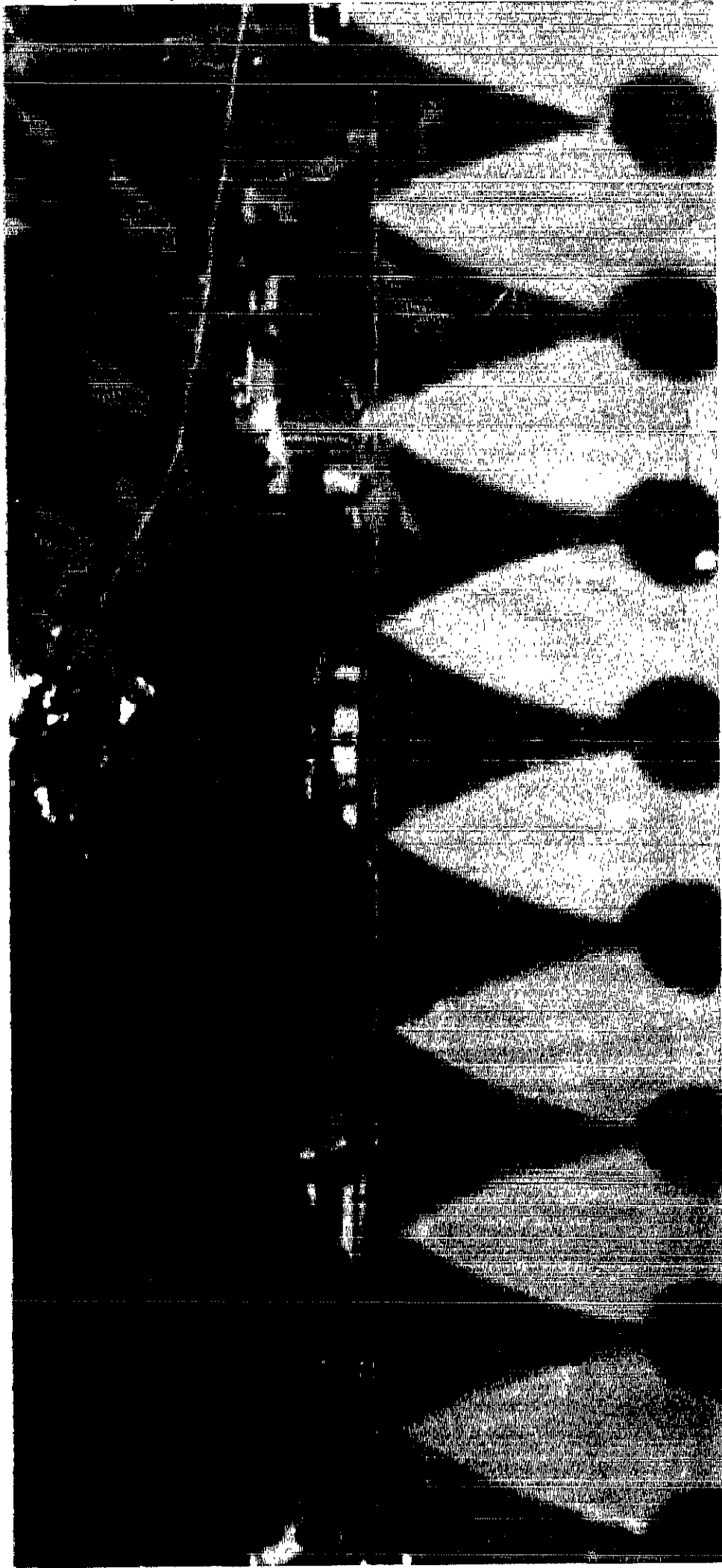
358 WYE
 354 Wye Rd
 350 Wye Rd
 350 Wye Rd
~~34~~ 348 Wye Rd
 352 Wye Rd
 351 Wye Rd
 356 Wye Rd

PROTESTANT'S
EXHIBIT

I

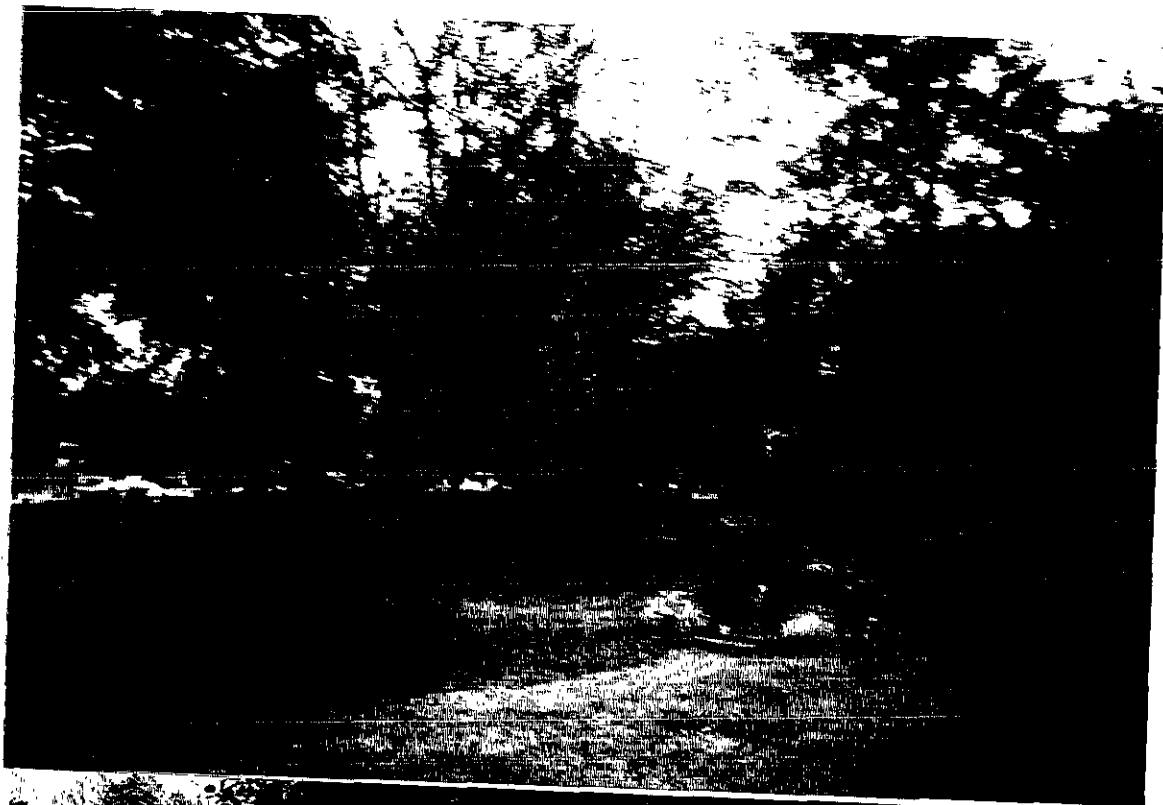
PHOTOS
(a - o)



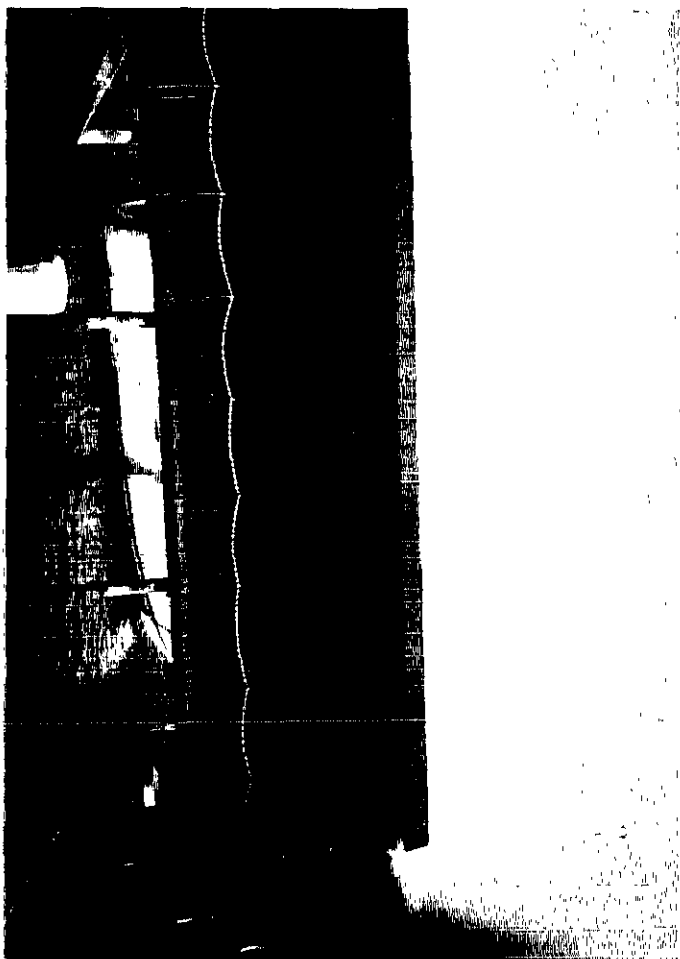




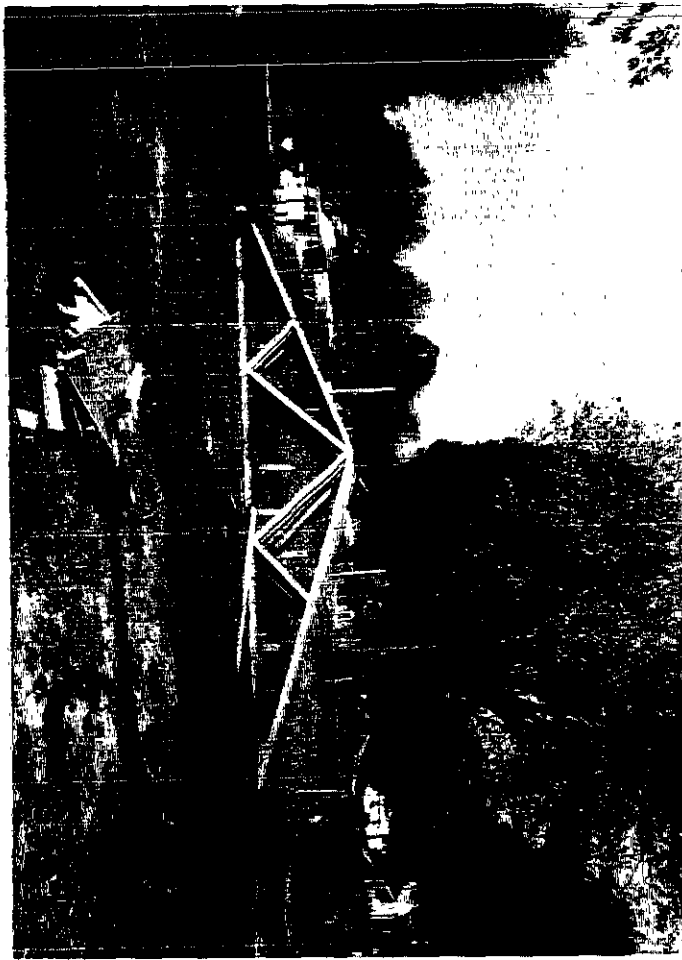










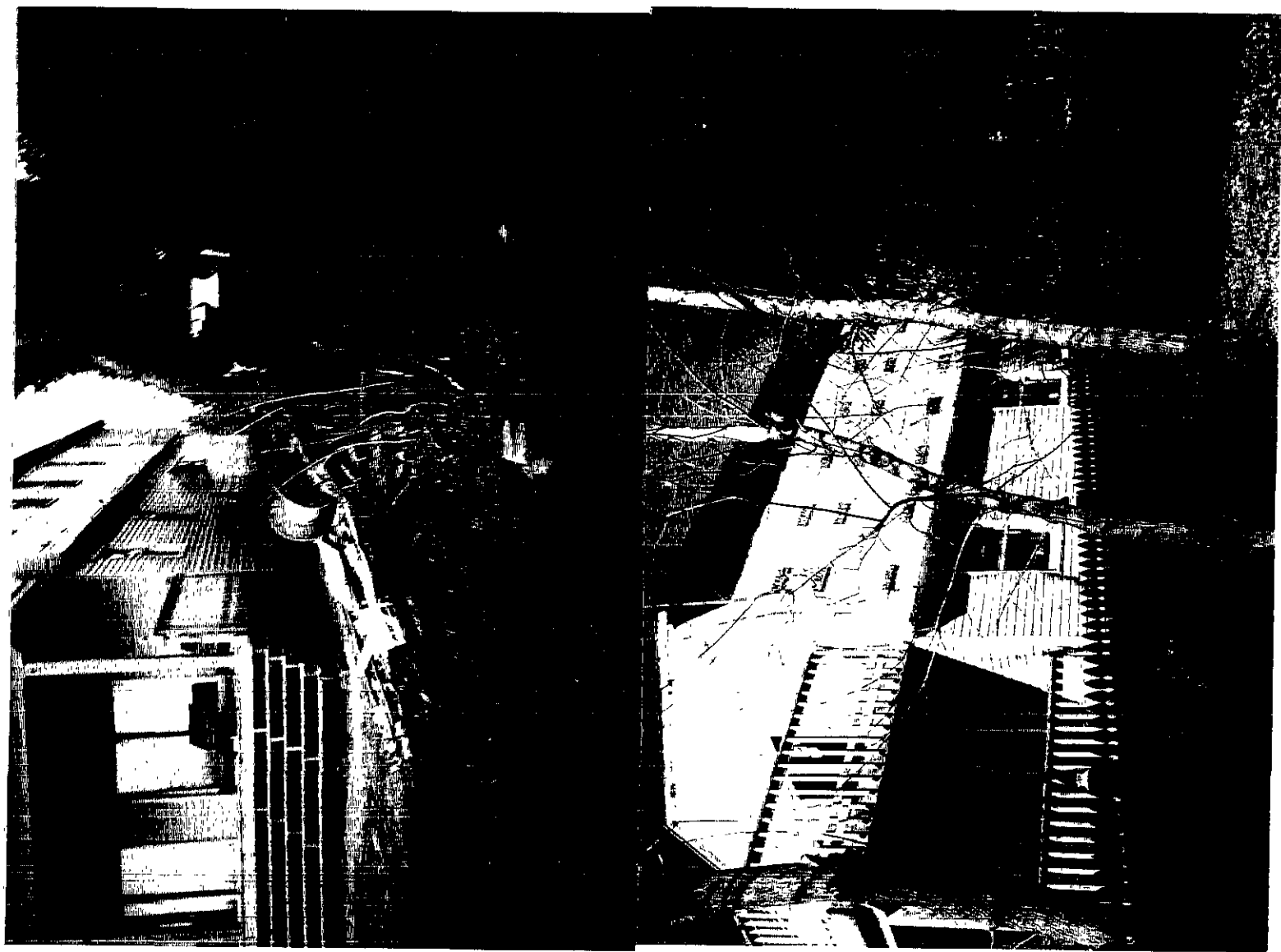


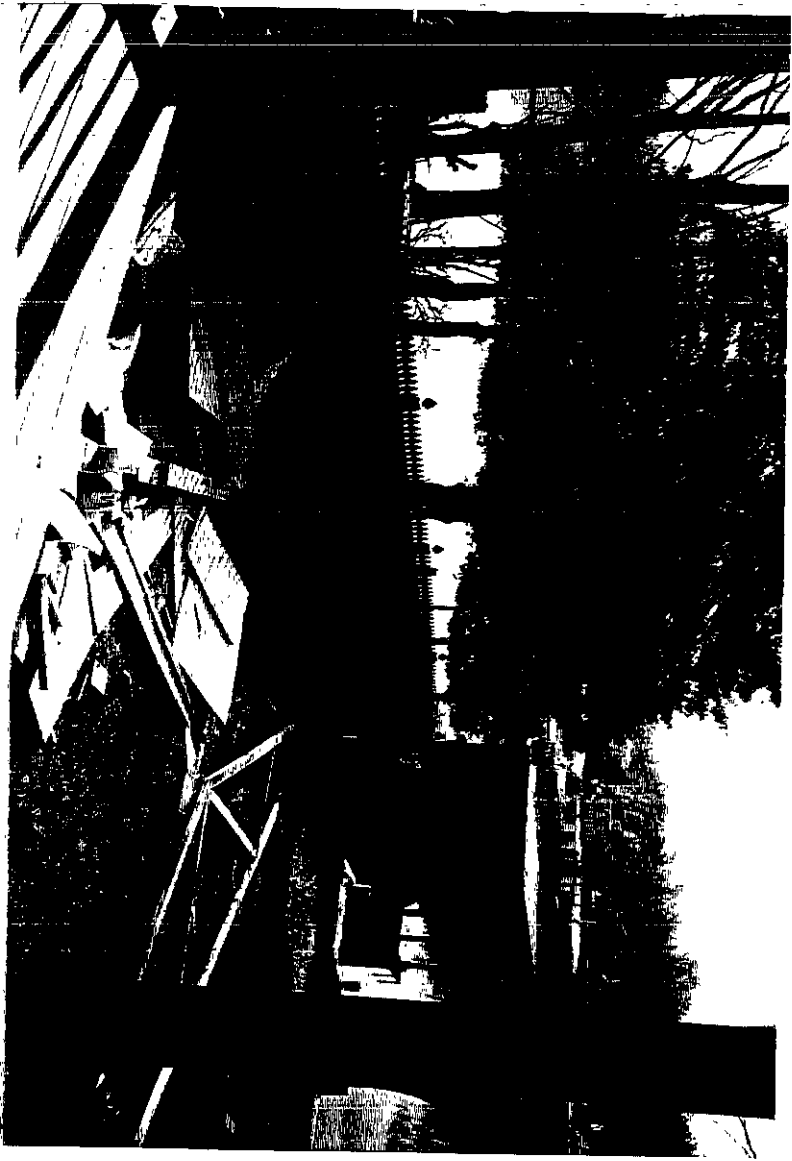


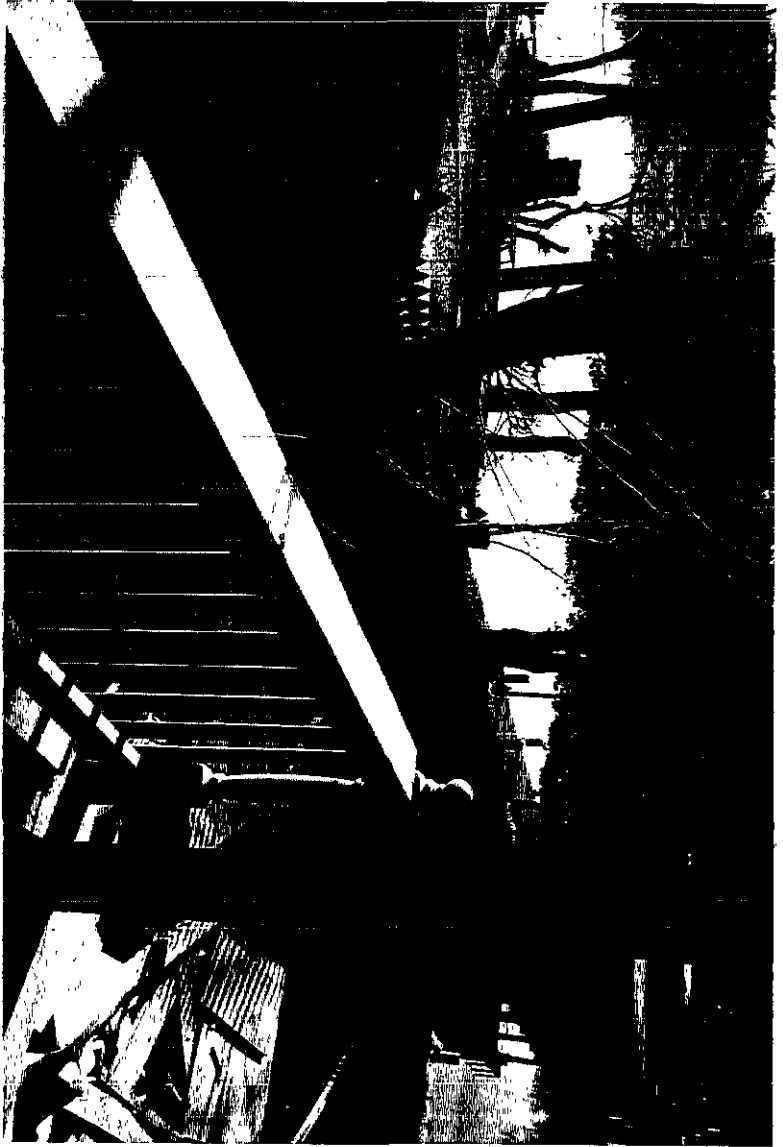
PETITIONER'S
EXHIBIT
3

PHOTOS

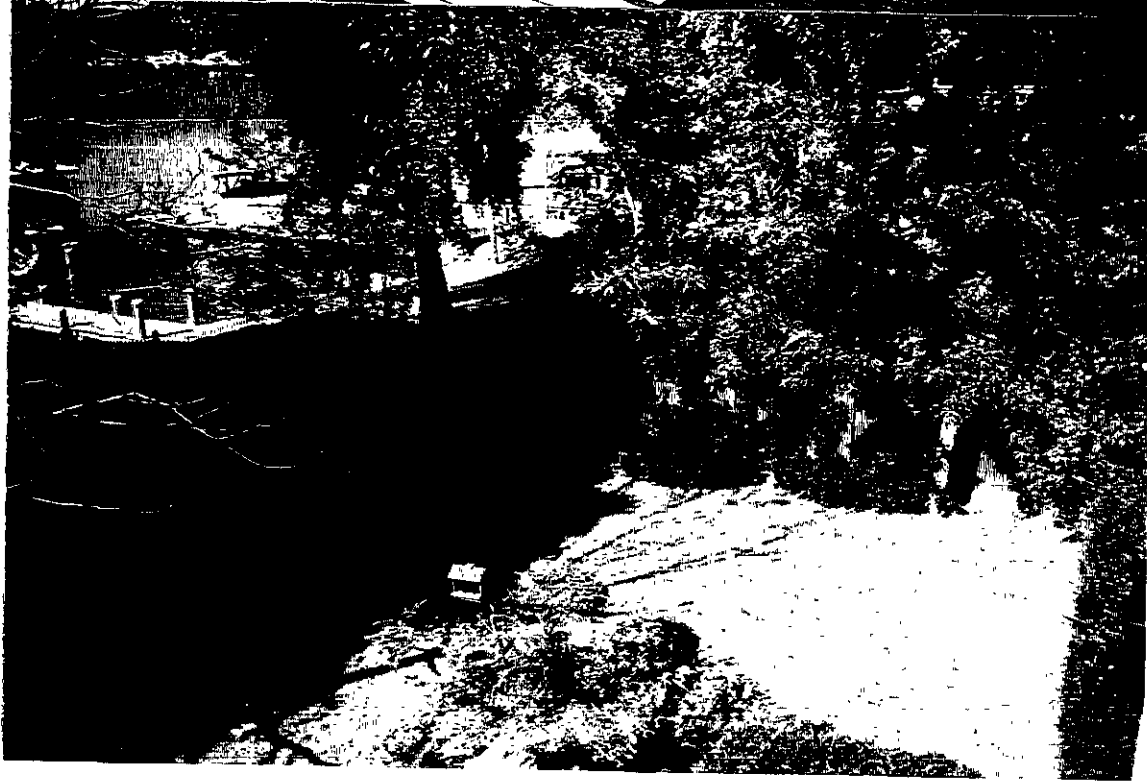
(3a - 3s)







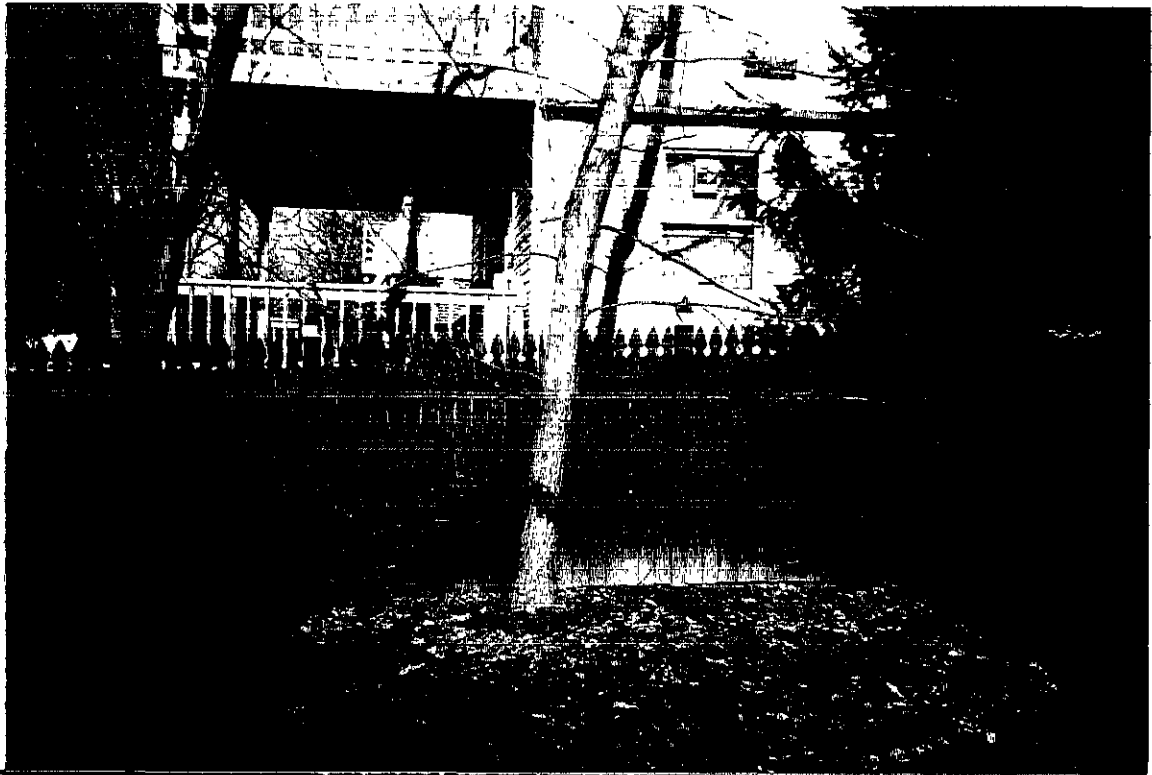




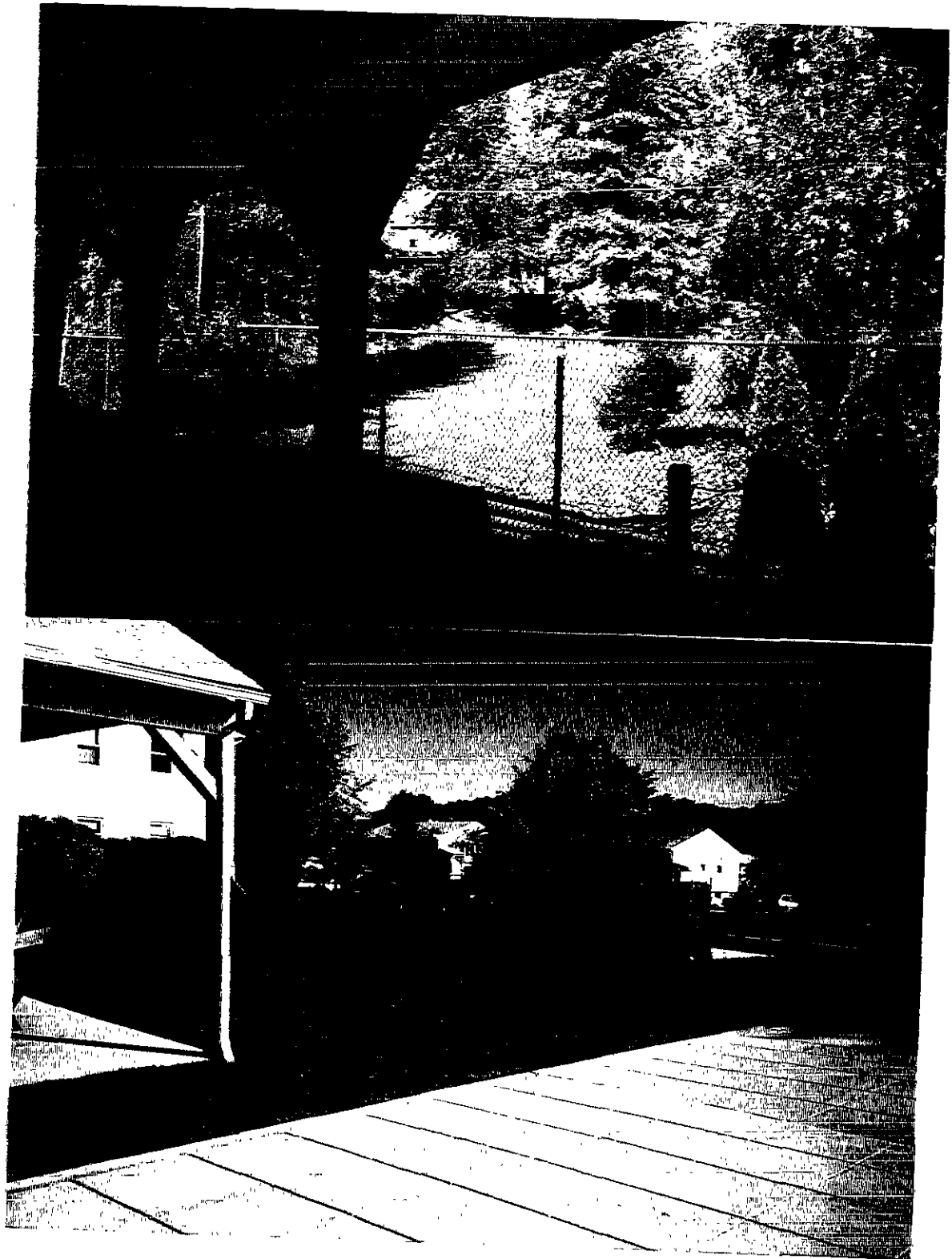


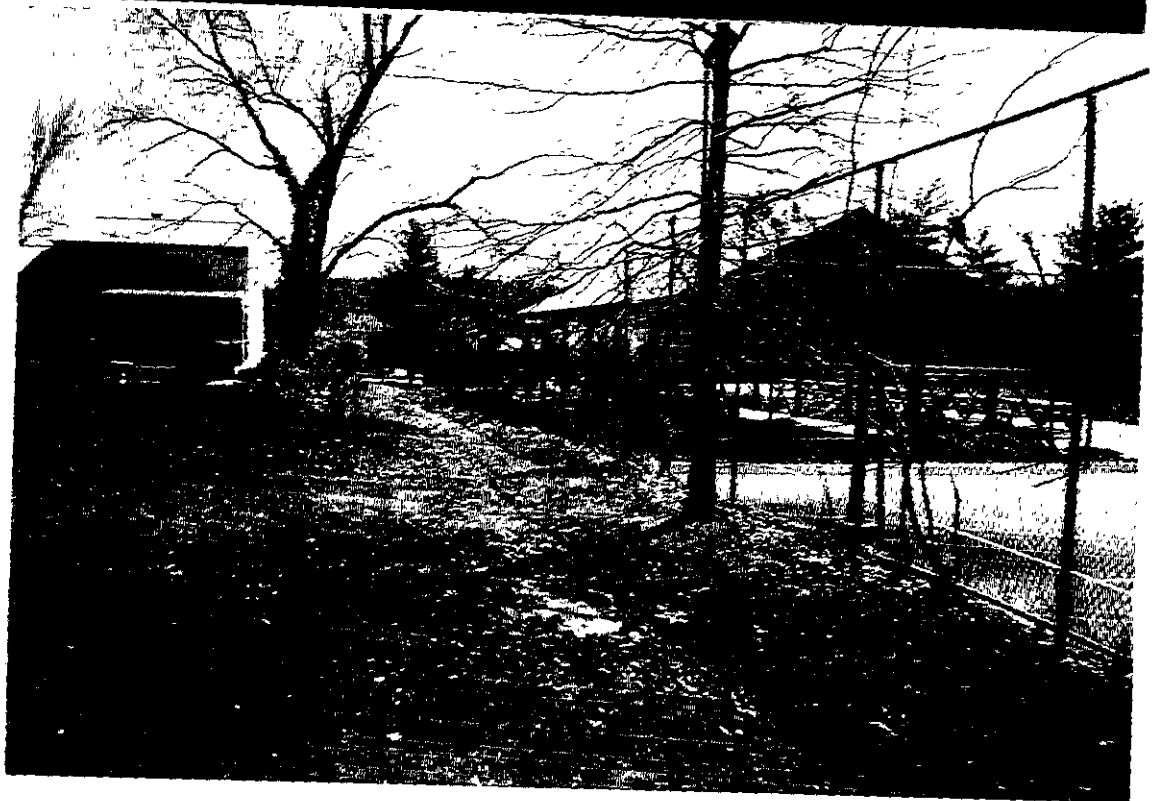
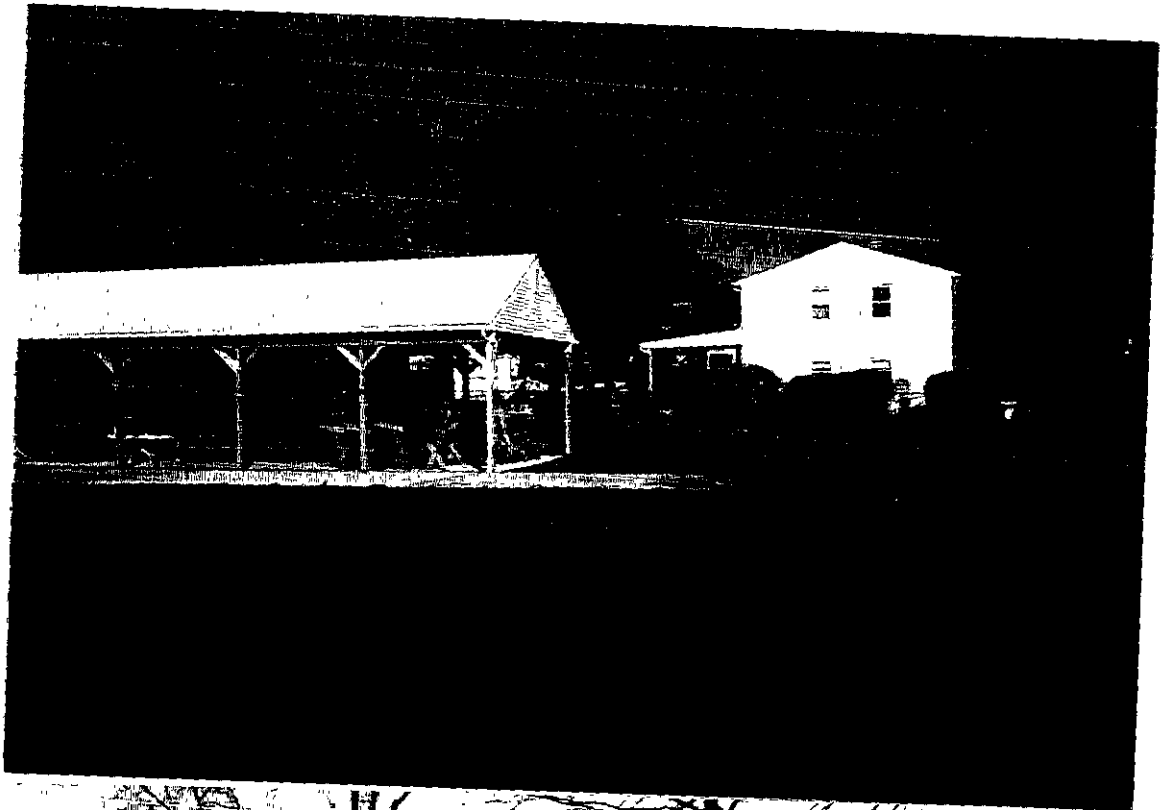


















96-104-A

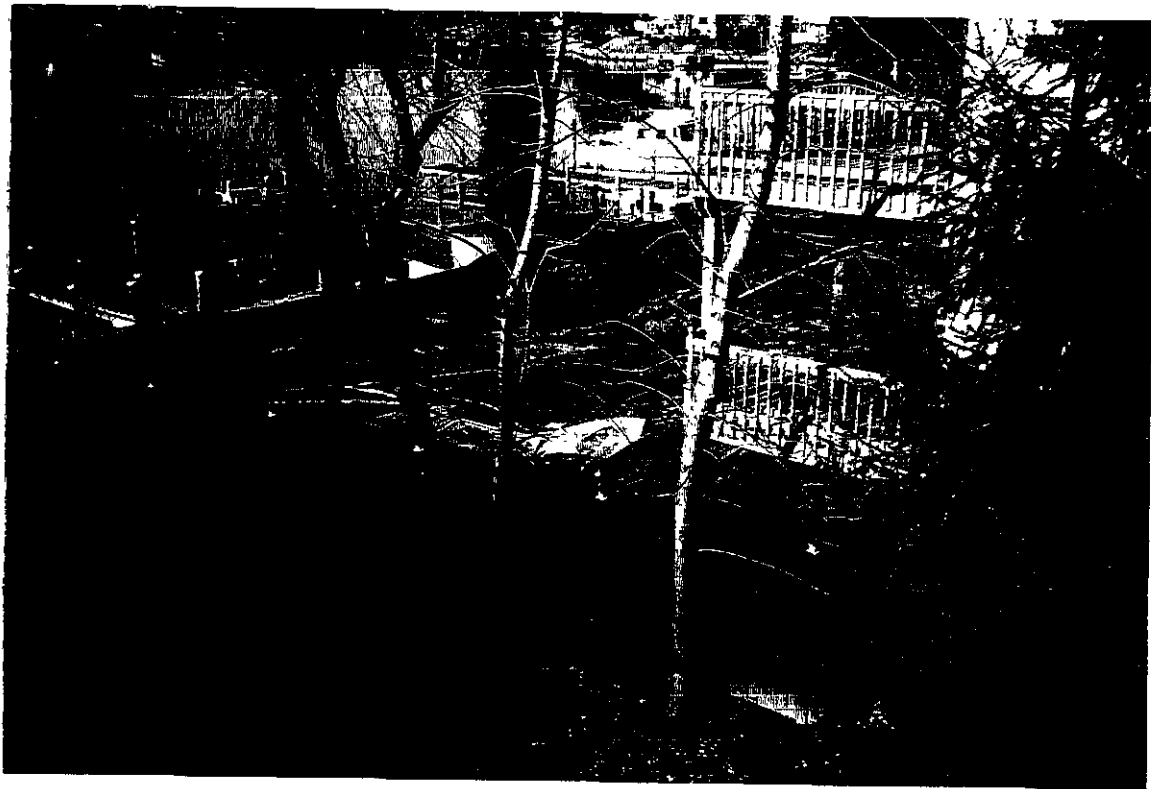


House 358

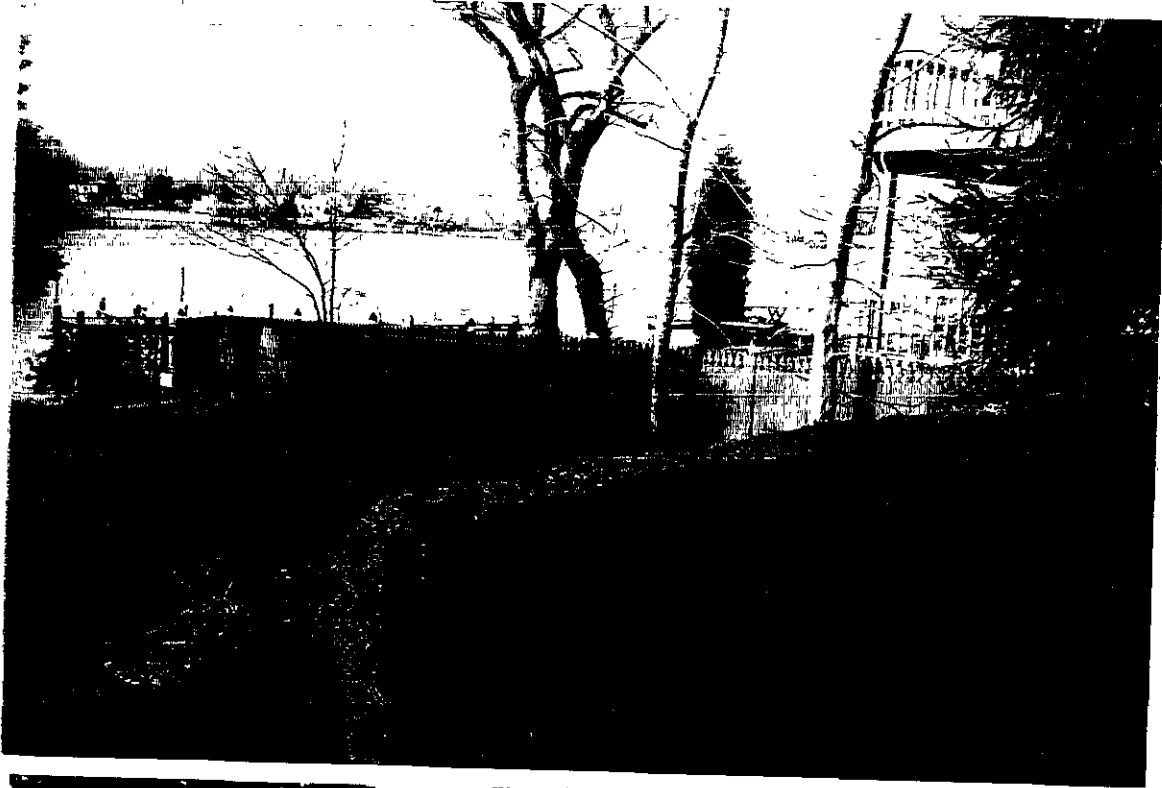
House
360

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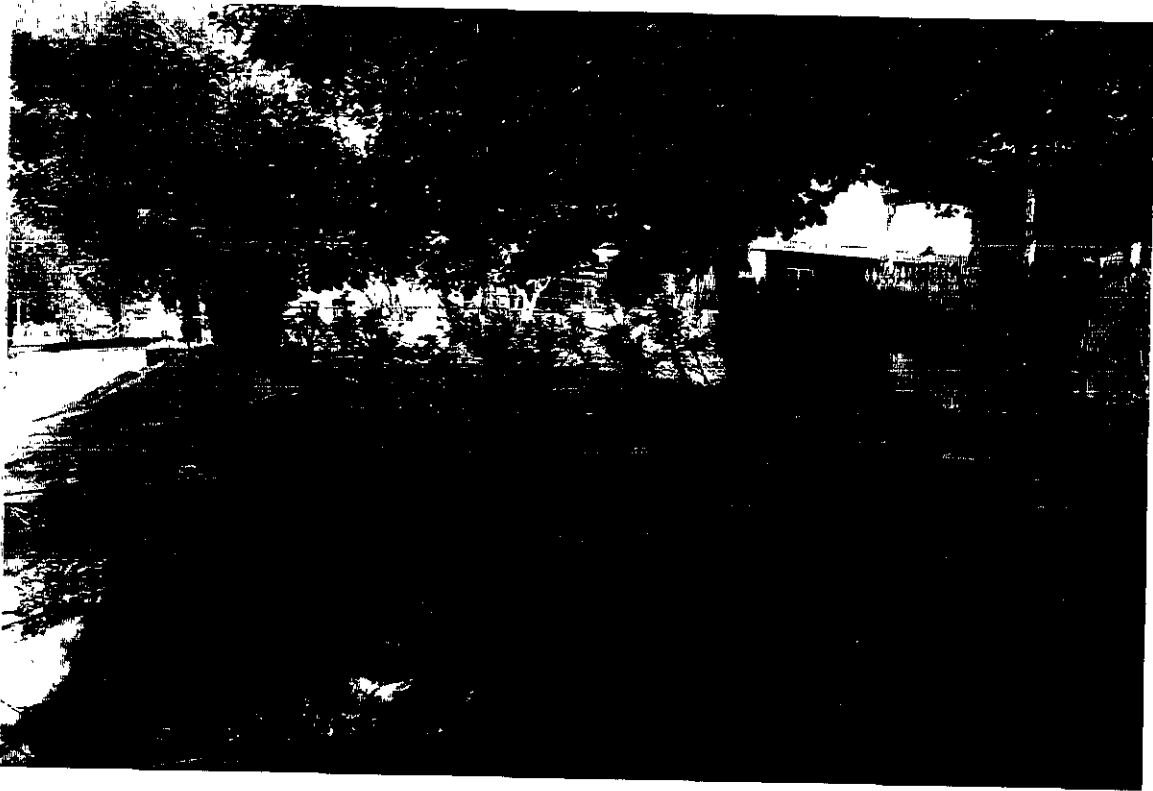
96-104-A



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96-104-A



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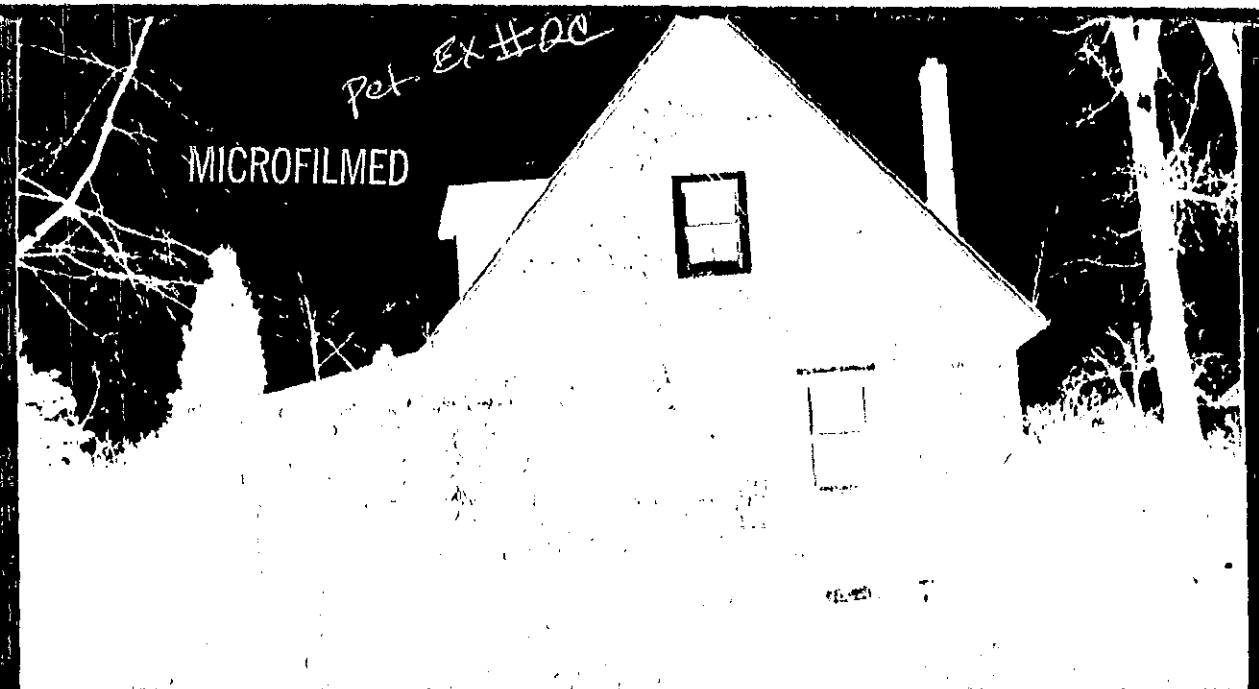


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96-104-A



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ORIGINAL PHOTOS
TAKEN BY
MR. BITTLE. 7/31/97
(copy to be
microfilmed)



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 3, 1995

Mr. and Mrs. Joseph G. Bittle, Jr.
360 Wye Road
Baltimore, Maryland 21221

RE: Item No.: 122
Case No.: 96-104-A
Petitioner: J. G. Bittle, et ux

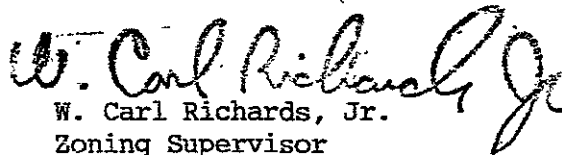
Dear Mr. and Mrs. Bittle:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on September 15, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,


W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

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BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Sept. 29, 1995
 Zoning Administration and Development Management

FROM: *RWB* Robert W. Bowling, P.E., Chief
 Development Plans Review

RE: Zoning Advisory Committee Meeting
 for October 2, 1995
 Items 118, 121 and 122

The Development Plans Review Division has reviewed
the subject zoning items and we have no comments.

RWB:sw

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development
Management

DATE: September 20, 1995

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

Item Nos. 72, 118, 121, 122

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by:

Jeffrey W. Long

Division Chief:

Gary L. Keras

PK/JL

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: ZADM
FROM: DEPRM
Development Coordination
SUBJECT: Zoning Advisory Committee
Agenda: 9/25/95

DATE: 9/25/95

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: 118
119
120
121

122 (4)

LS:sp

LETTY2/DEPRM/TXTSBP

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**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Hal Kassoff
Administrator

9-20-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 122 (JRF)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Bob Small
Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

MICROFILMED

aj
Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 09/28/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 118, 121 & 122.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

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RECEIVED

SEP 29 1995

ZADM

cc: File



Printed on Recycled Paper

PETITION PROBLEMS

#117 -- CAM

1. No signature for attorney.
2. No telephone number for attorney.

#120 -- CAM

1. Need someone with power of attorney to sign for Carl Holzabhel, deceased legal owner. (Also need the document authorizing person to do this.)
2. Need title of person signing for Barkley Woods, legal owner.

#122 -- JRF

1. Notary section is incorrect.

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

August 27, 1996

Mr. and Mrs. Joseph G. Bittle, Jr.
360 Wye Road
Baltimore, MD 21221

RE: Petition for Zoning
Variance
S/S Wye Road, 15 ft. S of
c/l of St. George Road
(360 Wye Road)
15th Election District
7th Councilmanic District
Joseph G. Bittle, Jr., et
ux - Petitioners
Case No. 96-104-A

Dear Mr. and Mrs. Bittle:

Please be advised that an appeal of the above-referenced case was filed in this office on August 19, 1996 by Pat Ward and James L. Hancock. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON
Director

AJ:rye

cc: Mr. Robert Reilley
Mrs. Sharon Michael
Norman Lauenstein, Esquire
People's Counsel

MICROFILMED

96-104-A

Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

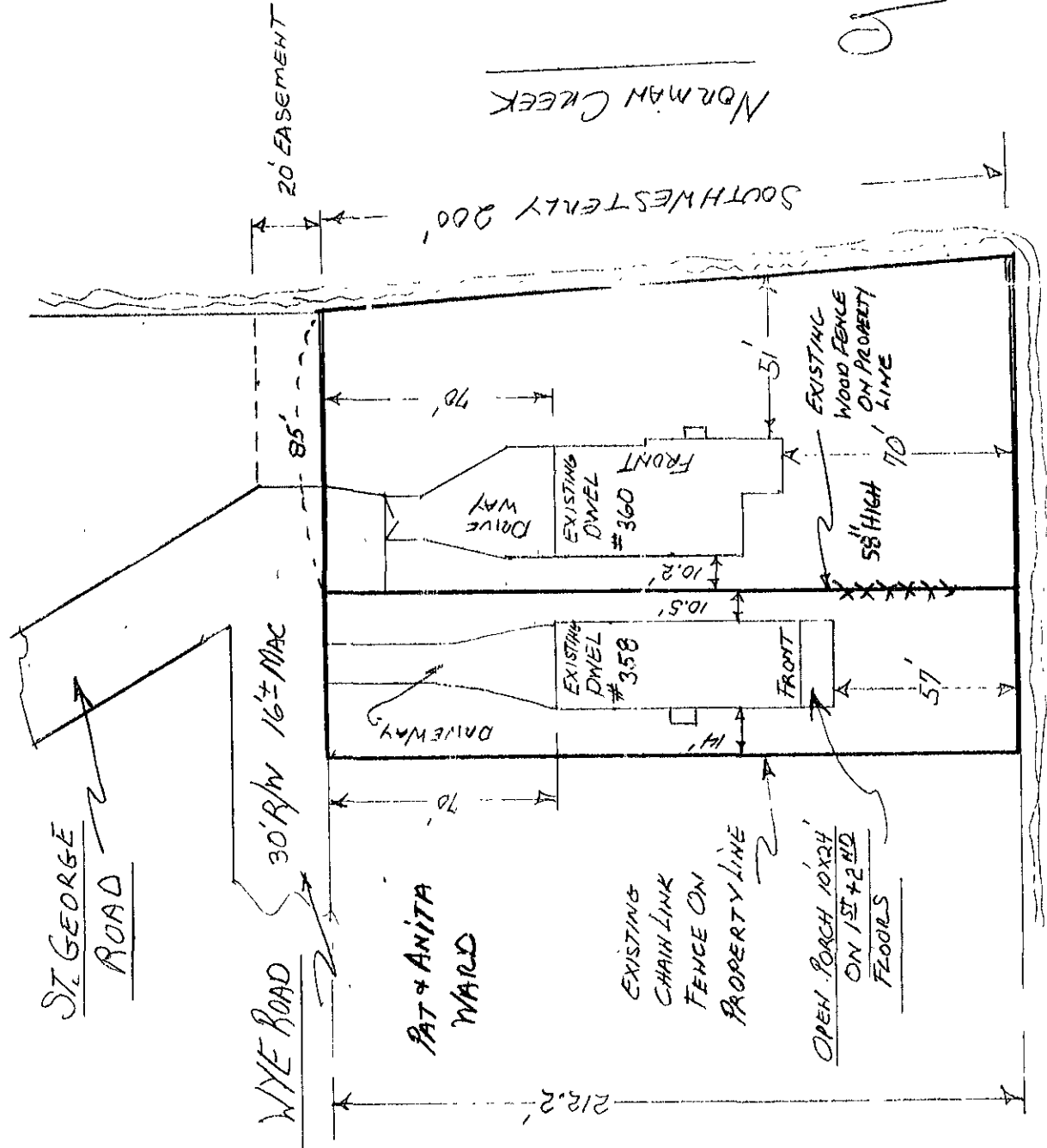
see pages 5 & 6 of the CHECKLIST for additional required information

PROPERTY ADDRESS: 360 WYE ROAD

Subdivision name: MIDDLEBOROUGH

plat book # 4, folio # 191, lot # 169, section #

OWNER: JOSEPH & LOIS BITTLE, JR.



North

date: 9/13/95

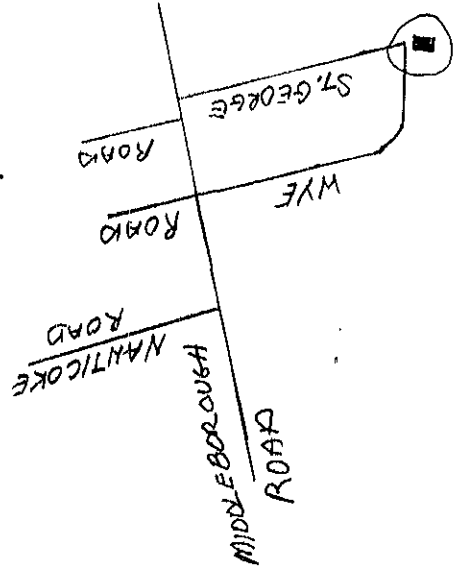
prepared by: JOE BITTLE, JR.

Scale of Drawing: 1" = 50'

NORMAN CREEK

9/2/95

016-10-J-X



Vicinity Map
North
scale: 1" = 1000'

LOCATION INFORMATION

Election District: 15

Councilmanic District: 7

1" = 200' scale map #: N.E. 1-J

Zoning: D.R. 5.5

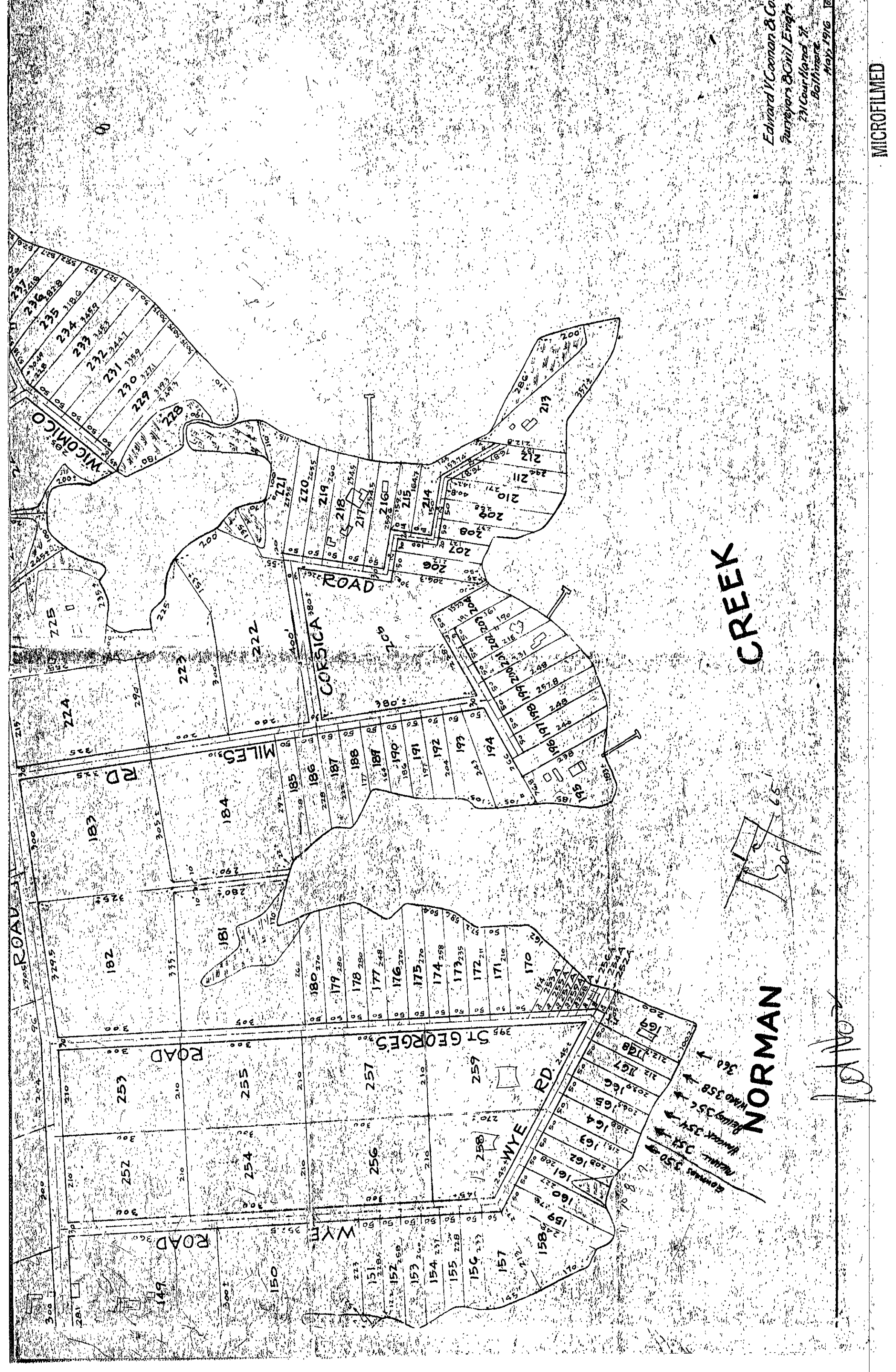
Lot size: 0.43 acreage 19,085 square feet

public ☒ private ☐
SEWER: ☒ WATER: ☒
Chesapeake Bay Critical Area: ☒ ☐ ☐

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by: JF ITEM #: 122 CASE #: MICROFILMED



Edward J. Coonan & Co.
Surveyors & Civil Engineers
231 Courtenay St.
Wellington.
May 1916

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